BAIL SLIP

The Appellant/Accused was directed to be released on bail by the order of this Court dated 28.3.2000 and made in Crl.M.P.No.10901/99 (SC.209/97 on the file of the I Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Erode.)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2005

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

Crl.A.No.125 of 1999

Arumugam @ Aran ...Appellant (Accused)

-vs-

State,
the Inspector of Police
Erode Taluk and District
(Crime No.135/97) ...Respondent (Complainant)

Criminal Appeal against the judgment dated 11.8.1998 in S.C.NO.209 of 1997 on the file of the First Additional District and Sessions Judge cum Chief Judicial Magistrate, Erode District and to acquit the appellant/accused.

For Appellant : Mr.M.M.Sundaresh

For Respondent : Mr.M.K.Subramanian,
Govt. Advocate (Criminal Side)

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JUDGMENT

[The Judgment of the Court was delivered by
M.CHOCKALINGAM,J]

Aggrieved over the judgment of the First Additional District and Sessions Judge cum Chief Judicial Magistrate, Erode District made in SC.No.209/97 wherein the appellant stood charged, tried and

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found guilty for an offence under section 302 IPC and sentenced to undergo life imprisonment, he has brought forth this appeal.

2. The facts that are necessary for the disposal of this appeal can be stated thus:-

(a) The deceased was a native of Kavundachipalayam where P.W.7 and his wife P.W.6, were cultivating two acres of land and the accused was cultivating other two acres of land totalling to 4 acres belonging to one Sekar Gounder. In sharing a remuneration, there arose a dispute between the accused and the deceased on 23.4.1997. They were pacified by P.W.1 and others. From that time, the accused and the deceased were not in talking terms. Just ten days prior to the date of occurrence, the accused met the deceased near the temple of Pottusamy and informed him that he should not come to the house of P.W.7 and if he comes so, he would finish off his life. The same was witnessed by P.Ws.1 to 4. The deceased replied that he would do so. On 23.4.1997 at about 9.00 p.m., P.W.1 was sleeping in the Maduraiveeran temple situated at Harijan Colony of Kavundachipalayam, whereas, the deceased, P.Ws.2 to 4 and one Subramaniam were all sleeping at a distance of 10 feet away from that place i.e., in the Pottusamy temple. At about 11.30 p.m., on hearing a distressing cry, P.Ws.2 to 4 woke up and saw the accused moving from the place. They found the deceased with blood injury on his head. The accused ran away from the scene of occurrence. Immediately, they took the deceased to the Government Hospital, Erode. P.W.13, doctor attached to the Government Hospital, gave him initial treatment but subsequently, he died despite the treatment. An intimation was given to Erode Taluk Police Station.

(b) P.W.10, Head Constable, on receiving the intimation at about 6.15 p.m on 24.4.1997, proceeded to the hospital and recorded the statement given by P.W.1 under Ex.P1. On the strength of Ex.P1, a case was registered in Crime No.135/1997 under section 302 IPC. Printed First Information Report, Ex.P7 was despatched to the court.

(c) P.W.14, Inspector of Police took the investigation. He proceeded to the mortuary and conducted inquest over the body of the deceased in the presence of witnesses and panchayathars and prepared Ex.P17, inquest report. From there, he proceeded to the scene of occurrence, made an inspection of the same and prepared an observation mahazar, Ex.P12 and Ex.P18 the rough sketch, in the presence of witnesses. M.O.1, stone, M.O.6, blood stained earth and M.O.7, sample earth were also recovered from the scene of occurrence. Through P.W.8 a photographer, photos, M.O.3 series were taken. A requisition was sent to the Government Hospital along with the dead body of the deceased Elango for conduct of autopsy.

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(d) P.W.13, a Civil Surgeon, attached to the Government Hospital, Erode, on receipt of the requisition, conducted autopsy on the dead body and found the following injuries:-

(1) 4 sutured wounds 5 cms above the eye brow in parietal region.

(2) Abrasion 1 x 1 cm left edge of eye

(3) Contusion over right frontal region 4 x 3 cms.

(4) Upper jaw teeth shaky.

(5) Blood stain from right ear, one 1 x 1 cm abrasion in centre of right ear present.

(6) Abrasion 1 x 1 cm right parietal region.

(7) Both eye balls contused and swollen.

(8) An incised wound 3 x 1 x 1 cm over right lower jaw.

The Doctor has issued a postmortem certificate Ex.P11 and has opined that the deceased would appear to have died of shock and haemorrhage due to head injury prior 12 to 18 hours.

(e) During investigation, the accused was arrested on 25.4.1997 at about 6.30 a.m. He volunteered to give a confessional statement which was recorded by the Investigating Officer in the presence of witnesses. Admissible portion is marked as Ex.P14. M.O.2, a lungi, was recovered under a mahazar Ex.P15. All the material objects were despatched to the Court with a requisition to send them for chemical analysis. Accordingly, they were subjected to chemical analysis, and Ex.P4 - Chemical Analyst's report and Ex.P5 - Serologist's report were received by the Judicial Magistrate Court. On completion of investigation, a final report was placed before the Judicial Magistrate concerned.

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3. The case was committed to Court of Sessions. Necessary charges were framed against the appellant/ accused.

4. In order to substantiate the charge levelled against the accused, the prosecution examined 14 witnesses and relied on 18 exhibits and 7 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in

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the evidence of the prosecution witnesses, which he flatly denied as false. Neither a witness was examined nor a document was marked on the side of the defence.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded punishment as referred to above, which is the subject matter of challenge in this appeal.

6. The learned counsel appearing for the appellants inter alia would make the following two submissions:

(i) According to the prosecution, there were four eyewitnesses, examined as PWs.1 to 4, but no one has spoken certainly that it was the accused who committed the offence. Apart from that, the first document is a statement given to a doctor, P.W.11, which is marked as Ex.P9, wherein it has been clearly stated that it was an act committed by an unknown person. Even in First Information Report they have not given definite version that it was the accused who went away from the scene of occurrence; but, they have stated that the person who went away from the place of occurrence looked like the accused. Apart from this, no other material was placed before the lower court, except the evidence in respect of so called recovery.

(ii) Even assuming to be so that the recovery part is proved by the prosecution, it cannot be a conclusive proof for the commission of offence, and under such circumstance, the lower court should have given benefit of doubt to the accused but erroneously found the accused guilty and so the judgment of the lower court has got to be set aside.

7. Heard the learned Government Advocate on Criminal Side on the above contentions.

8. The prosecution came out with an accusation stating that on 23.4.1997 at about 11.00 p.m. one Elango was attacked by the accused/appellant at Kavundachipalayam with a stone on his head, which resulted in the death of the deceased at the Government Hospital, Erode. It is not in controversy that the said Elango died out of homicidal violence. From the place of occurrence, he was taken to the hospital, where he died despite treatment. The Doctor who conducted postmortem, has also given evidence that the deceased died out of shock and haemorrhage. Postmortem certificate has also been produced by the prosecution. It is also pertinent to point out that the accused/ appellant never questioned about the fact that the

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said Elango died out of homicidal violence. Hence, no difficulty is felt by the Court to record that the said Elango died out of homicidal violence.

9. This Court paid its full attention on the rival submissions made and had a thorough scrutiny of the materials available. In the instant case, there is no sufficient and acceptable evidence to connect the accused with the crime. The prosecution fully relied on the evidence of four witnesses, who according to the prosecution are eyewitnesses. Though they have categorically spoken to the fact that it was the accused, who committed the crime, if their evidence is tested with other part of evidence, it is highly doubtful whether their evidence could be accepted. In the instant case, it is admitted by the prosecution that the deceased Elango was taken from the place of occurrence to the Government Hospital on the very night of 23.4.1997 and within 15 minutes, he was given treatment by the doctor attached to the Government Hospital where a statement was given by the eyewitness who took him to the hospital that he was attacked by a stone by unknown person, which is marked as Ex.P9. The version "unknown person" as found in Ex.P9, came into existence within an hour from the time of occurrence.

10. Yet another circumstance was the First Information Report, wherein it has been clearly mentioned by P.W.1 that the person who was moving from the place of occurrence looked like the accused. There was no certain event in the First Information Report, which was given nearly about 6 hours after the occurrence. P.W.1 was not certain whether it was accused who committed the offence.

11. Under such circumstances, taking into consideration of the above said two early documents, if the evidence of witnesses P.Ws.1 to 4, who according to the prosecution are eyewitnesses, is tested, then, it has become highly doubtful. Apart from that, it has to be pointed out that in a case like this, unless and until the prosecution proves the case beyond reasonable doubt, it would not be safe to sustain the conviction. Therefore, it would be very difficult to find that the prosecution has proved the case beyond reasonable doubt. There cannot be any impediment for the accused enjoying the benefit of doubt. Thus, giving the same benefit of doubt to the appellant, the order of the lower court has got to be necessarily set aside, and accordingly, he is acquitted of the charge levelled against him.

12. Accordingly, the appeal is allowed setting aside the conviction and sentence passed by the lower Court.

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13. It is reported that the appellant is on bail. Hence, the bail bond executed by the appellant shall stand cancelled.

bg 15.07.2005

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Ist Additional District and Sessions Judge cum
   Chief Judicial Magistrate, Erode.

2. --do-- through the Principal Sessions Judge, Erode.

3. The Judicial Magistrate No.I, Erode.

4. -do- Thro The Chief Judicial Magistrate, Erode.

5. The District Collector, Erode District.

6. The DGP, Chennai

7. The Public Prosecutor, Chennai.

8.The Superintendent,
  Central Prison, Coimbatore.

9. The Inspector of Police
   Erode Taluk and District.

1 cc to Mr.M.M.Sundaresh, Advocate, SR.29404

bk (co)

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